



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-108934-16]

RIN 1545-BN38

User Fees for Offers in Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations that provide user fees for offers in compromise. The proposed amendments affect taxpayers who wish to pay their liabilities through offers in compromise. The proposed effective date for these proposed amendments to the regulations is for offers in compromise submitted on or after February 27, 2017. This document also provides a notice of public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Outlines of topics to be discussed at the public hearing scheduled for December 16, 2016 at 10:00 a.m. must be received by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG-108934-16), Room 5203, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours

of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-108934-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-108934-16). The public hearing will be held in the Main IR Auditorium beginning at 10:00 am in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed amendments to the regulations, Maria Del Pilar Austin at (202) 317-5437; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina Johnson, at (202) 317-6901; concerning cost methodology, Eva Williams, at (202) 803-9728 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend §300.3 of the User Fee Regulations (26 CFR part 300), which provides for a user fee applicable to offers in compromise under section 7122 of the Internal Revenue Code (Code).

Section 7122(a) provides the Secretary the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. Section 7122(d)(1) requires the IRS to prescribe guidelines for officers and employees of the IRS to determine whether an offer in compromise is adequate and should be accepted to resolve a dispute. Those guidelines can generally be found in § 301.7122-1. Under those guidelines, an offer in compromise may be

accepted if there is doubt as to liability, if there is doubt as to collectability, or if acceptance will promote effective tax administration. See § 301.7122-1(b).

When the IRS receives an offer in compromise, it initially determines whether the taxpayer submitting the offer is eligible for the offer in compromise program and, if the taxpayer is eligible, whether the offer submitted is otherwise processable. Currently, a taxpayer may be ineligible for the offer in compromise program for a number of reasons, including if the taxpayer is in bankruptcy or has not filed all required tax returns. The IRS will return an offer as nonprocessable if the taxpayer is ineligible or if the offer has not been properly submitted.

If the IRS determines the offer in compromise is processable, then except where the offer is made under section 7122(d)(3)(B) relating only to issues of liability and the case is processed without a financial investigation, the IRS investigates and verifies the taxpayer's financial information submitted with the offer to determine whether such a compromise is appropriate before accepting the terms of the offer in compromise. If the IRS initially rejects a processable offer in compromise based on an investigation of the taxpayer's financial position, section 7122(e)(1) provides that the IRS must conduct an independent administrative review of that decision before communicating the rejection to the taxpayer. If the independent administrative review upholds the IRS's initial decision to reject a processable offer in compromise, section 7122(e)(2) provides that the taxpayer is notified of the rejection and has the right to appeal the rejection to the IRS's Appeals Office. When the IRS accepts an offer in compromise, the IRS processes the payments and monitors the taxpayer's compliance with the terms of the offer.

Under §300.3, the IRS currently charges \$186 for processing an offer in compromise, which includes reviewing and monitoring the offer. Under §300.3(b)(2)(i) and (ii), if a fee is charged and the offer is accepted to promote effective tax administration or accepted based on doubt as to collectability where the IRS has determined that collection of an amount greater than the amount offered would create economic hardship, then the user fee is applied against the amount to be paid under the offer unless the taxpayer requests that it be refunded. Section 300.3(b)(1)(i) and (ii) provide that no fee is charged if an offer is based solely on doubt as to liability, or made by a low-income taxpayer.

Explanation of Provisions

A. Overview

To bring the user fee rate for offers in compromise closer to the full cost to the IRS of providing this taxpayer specific service, the proposed regulations under §300.3 would increase the user fee for an offer in compromise to \$300. The proposed regulations do not modify other portions of the User Fee Regulations regarding offers in compromise, such as §300.3(b)(1)(i) and (ii) which waive the user fee for offers in compromise submitted by low-income taxpayers and offers in compromise based solely on doubt as to liability. The increased user fee for offers in compromise is proposed to be effective for offers submitted on or after February 27, 2017.

B. User Fee Authority

The Independent Offices Appropriations Act (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services provided by the agency (user fees). The IOAA provides that these user fee regulations are subject

to policies prescribed by the President and shall be as uniform as practicable. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993; OMB Circular).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The OMB Circular states that agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing those services. The OMB Circular requires that agencies identify all services that confer special benefits and determine whether user fees should be assessed for those services.

Agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services. During this biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. The full cost of providing a service includes, but is not limited to, salaries, retirement benefits, rents, utilities, travel, and management costs, as well as an appropriate allocation of overhead and other support costs associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full cost requirement. The OMB may grant exceptions only where the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of

providing the service and therefore must fund the remaining cost of providing the service from other available funding sources. By doing so, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those recipients who should otherwise be required to pay the full costs of receiving that benefit as provided for by the IOAA and the OMB Circular.

C. Offer in Compromise Program User Fee

The offer in compromise program confers a special benefit on identifiable recipients beyond those accruing to the general public. A taxpayer with an accepted offer in compromise receives the special benefit of resolving his or her tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the offer, and the benefit of paying the compromised amount over a period not to exceed 24 months. Further, section 6331(k)(1) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an offer in compromise is pending, for 30 days after a rejection, and, if a timely appeal of a rejection is filed, for the duration of the appeal. Because of these special benefits, the IOAA and the OMB Circular authorize the IRS to charge a user fee for the offer in compromise that reflects the full cost of providing the service of the offer in compromise program to the taxpayer.

The amount of the offer in compromise user fee was last changed in 2014. As required by the IOAA and the OMB Circular, the IRS completed its 2015 biennial review of the offer in compromise program and determined that the full cost of an offer in compromise is \$2,450.

In accordance with the OMB Circular, this proposed amendment to the regulations increases the offer in compromise fee to recover more of the costs

associated with such offers. These proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits certain limited exceptions to this requirement. The IRS requested and the OMB approved an exception to the full cost requirement. The proposed fee for processing an offer in compromise is \$300. In light of constraints on IRS resources for tax administration, the Treasury Department and the IRS have determined that it is necessary to recoup more of the costs of the offer in compromise program. The IRS will continue its practice of providing services subject to user fees at costs less than otherwise charged where there is a compelling tax administration reason to do so. Therefore, these proposed regulations do not modify the portions of the current regulations that except low-income taxpayers and offers based on doubt as to liability from the user fee. The proposed fee balances the need to recover more of the costs with the goal of encouraging offers in compromise.

As required under the OMB Circular, the IRS will review the user fee for offers in compromise during its 2017 biennial review. The IRS also plans to evaluate the impact of the current proposed fee increase on the offer in compromise program, and the IRS will take this impact into consideration when revising the offer in compromise user fee in the future.

D. Calculation of User Fees Generally

User fee calculations begin by first determining the full cost for the service. The IRS follows the guidance provided by the OMB Circular to compute the full cost of the service, which includes all indirect and direct costs to any part of the U.S. government including but not limited to direct and indirect personnel costs, physical overhead, rents,

utilities, travel, and management costs. The IRS's cost methodology is described below.

Once the total amount of direct and indirect costs associated with a service is determined, the IRS follows the guidance in the OMB Circular to determine the costs associated with providing the service to each recipient, which represents the average per unit cost of that service. This average per unit cost is the amount of the user fee that will recover the full cost of the service.

The IRS follows generally accepted accounting principles (GAAP), as established by the Federal Accounting Standards Advisory Board (FASAB) in calculating the full cost of providing services. The FASAB Handbook of Accounting Standards and Other Pronouncements, as amended, which is available at http://files.fasab.gov/pdf/2015_fasab_handbook.pdf, includes the Statement of Federal Financial Accounting Standards SFFAS No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government (SFFAS No. 4). SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of federal programs. The methodology described below is in accordance with SFFAS No. 4.

1. Cost center allocation

The IRS determines the cost of its services and the activities involved in producing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is called a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center

are recorded in the IRS's cost accounting system and allocated to that cost center. The costs allocated to a cost center are the direct costs for the cost center's activities as well as all indirect costs, including overhead, associated with that cost center. Each cost is recorded in only one cost center.

2. Determining the per unit cost

To establish the per unit cost, the total cost of providing the service is divided by the volume of services provided. The volume of services provided includes both services for which a fee is charged as well as subsidized services. The subsidized services are those where OMB has approved an exception to the full cost requirement, for example, to charge a reduced fee to low-income taxpayers. The volume of subsidized services is included in the total volume of services provided to ensure that the IRS, and not those who are paying full cost, subsidizes the cost of the reduced-cost services.

3. Cost estimation of direct labor and benefits

Not all cost centers are fully devoted to only one service for which the IRS charges a user fee. Some cost centers work on a number of different services. In these cases, the IRS estimates the cost incurred in those cost centers attributable to the service for which a user fee is being calculated by measuring the time required to accomplish activities related to the service, and estimating the average time required to accomplish these activities. The average time required to accomplish these activities is multiplied by the relevant organizational unit's average labor and benefits cost per unit of time to determine the labor and benefits cost incurred to provide the service. To

determine the full cost, the IRS then adds an appropriate overhead charge as discussed below.

4. Calculating Overhead

Overhead is an indirect cost of operating an organization that cannot be immediately associated with an activity that the organization performs. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and support organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants and equipment.
- Publication, reproduction, and graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a service, the IRS first calculates the Corporate Overhead rate and then multiplies the Corporate Overhead rate by the direct labor and benefits costs determined as discussed above. The IRS calculates the

Corporate Overhead rate annually based on cost elements underlying the Statement of Net Cost included in the IRS Annual Financial Statements, which are audited by the Government Accountability Office. The Corporate Overhead rate is the ratio of the sum of the IRS's indirect labor and benefits costs from the supporting and sustaining organizational units—those that do not interact directly with taxpayers—and all non-labor costs to the IRS's labor and benefits costs of its organizational units that interact directly with taxpayers.

The Corporate Overhead rate of 65.85 percent for costs reviewed during FY 2015 was calculated based on FY 2014 costs as follows:

Indirect Labor and Benefits Costs		\$1,693,339,843
Non-Labor Costs	+	<u>\$2,832,262,970</u>
Total Indirect Costs		\$4,525,602,813
Direct Labor and Benefits Costs	÷	<u>\$6,872,934,473</u>
Corporate Overhead Rate		<u>65.85%</u>

E. Calculation of Offer in Compromise User Fee

The IRS used data from cost centers dedicated to the offer in compromise program and cost centers that work on the offer in compromise program, as well as other IRS programs, to determine the full cost of the offer in compromise program. The IRS used the most recent two years of data, in this case FY 2013 and FY 2014, and averaged those costs in order to assure anomalies, such as short term increases or decreases in costs or numbers of offers in compromise, would not artificially impact the measured costs.

The offer in compromise program work is primarily performed by dedicated offices; therefore, the cost of most of the program can be determined through the costs recorded in the cost centers underlying the offices dedicated to the offer in compromise program. The IRS identified the offices that provide 100 percent of their time to this program (Offer in Compromise Offices), determined the full costs of the Offer in Compromise Offices for FY 2013 and 2014, and averaged the costs for those two years to determine the annual average costs of those offices. The average costs for the Offer in Compromise Offices were as follows:

Offer in Compromise Offices	Average Costs
Labor and Benefits	\$61,125,895
Non-Labor and Support Costs	\$90,730,487
Offer in Compromise Offices Full Cost	\$151,856,382

Because overhead and support costs are already included in the “Non-Labor and Support Costs” allocated to these cost centers, a Corporate Overhead factor has not been added to determine the full cost of the Offer in Compromise Offices.

There are three IRS organizations that perform work for the offer in compromise program, but that are not exclusively dedicated to the offer in compromise program (Non-OIC Dedicated Offices). Those organizations are:

- Office of Chief Counsel
- Small Business/Self-Employed (Examination)
- Office of Appeals

To calculate the average offer in compromise program costs attributable to these Non-OIC Dedicated Offices, the IRS obtained the time spent by each organization on the offer in compromise program for FY 2013 and 2014, calculated an annual average

of that time for each office, and multiplied that annual average time by the average hourly rates for that organization. After determining the total labor and benefits costs for the Non-OIC Dedicated Offices, the IRS added the Corporate Overhead costs allocable to these organizations to determine the full cost of the services provided by the Non-OIC Dedicated Offices. The costs are calculated as follows:

Non-OIC Dedicated Offices	
Office of Chief Counsel	
Average Hours	13,688
Average Salary and Benefits Rate	\$57.00
Chief Counsel Labor Cost	\$780,216
Examination	
Average Hours	3,723
Average Salary and Benefits Rate	\$52.72
Examination Labor Cost	\$196,277
Office of Appeals	
Average Hours	128,610
Average Salary and Benefits Rate	\$55.10
Examination Labor Cost	\$7,086,411
Total Cost for Chief Counsel, Examination and Appeals	
Total Labor and Benefits Cost	\$8,062,904
Corporate Overhead at 65.85%	\$5,309,422
Total Non-OIC Dedicated Offices Cost	\$13,372,326

To determine the full cost of the offer in compromise program, the IRS combined the Offer in Compromise Offices' full cost and the Non-OIC Dedicated Offices' full cost. The IRS calculated the unit cost by dividing the total offer in compromise program cost by the average of offer in compromise cases that were closed in FY 2013 and in FY

2014. Closed offers are offers that have been issued an acceptance letter, closed as rejected or withdrawn/terminated, or returned. An offer may be returned either because the offer was not processable when received, or after the offer was initially determined to be processable circumstances occur that cause the offer to no longer be processable or the Service is unable to proceed with the offer investigation. The IRS closed 70,622 offer in compromise cases in FY 2013 and 64,332 offer in compromise cases in FY 2014, for an average of offer in compromise cases closed in FY 2013 and FY 2014 of 67,477.

Unit Cost for Offer in Compromise	
Total Offer in Compromise Offices	\$151,856,382
Total Non-OIC Dedicated Offices	\$13,372,326
Offer in Compromise Program Full Cost	\$165,228,708
Average FY 2013 and 2014 Annual Volume of Closed Offers in Compromise	67,477
Unit Cost	\$2,450

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a

significant economic impact on any entity subject to the fee because generally the fee is applied to offset an existing tax obligation that the entity owes the IRS. As such, the fee does not represent a payment of any amount greater than what a substantial number of entities owe the IRS. Low-income taxpayers and taxpayers making offers in compromise based on doubt as to liability will continue not to be charged a fee and therefore will not be impacted economically by these proposed regulations.

Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “ADDRESSES” heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at www.regulations.gov or upon request.

A public hearing has been scheduled for December 16, 2016, beginning at 10:00 am in the Main IR Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the

building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR §601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments or electronic comments by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and 8 copies) by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Maria Del Pilar Austin of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300--USER FEES

Paragraph. 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701***

Par 2. In §300.3, paragraphs (b)(1) introductory text and (d) are revised to read as follows:

§300.3 Offer to compromise fee.

* * * * *

(b) Fee--(1) The fee for processing an offer to compromise submitted before February 27, 2017, is \$186. The fee for processing an offer to compromise submitted on or after February 27, 2017, is \$300. No fee will be charged if an offer is-- * * *

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(d) Effective/applicability date. This section is applicable beginning February 27, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016-24666 Filed: 10/12/2016 8:45 am; Publication Date: 10/13/2016]